IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1919 OF 2007

Sanjay D. Jadhav ....Petitioner

V/s.

The State of Maharashtra & Ors. ....Respondents

Mr.S.P. Kadam for the Petitioner.

Mr.S.S. Salunke for Respondent No.3.

Mr.S.A. Rajeshirke for Respondent No.4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 25TH APRIL, 2007.

ORAL JUDGMENT (PER R.M. SAVANT, J.) :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. The Petition filed under Article 226 of the Constitution of India raises a dispute in respect of various issues relating to elections of the Managing Committee of Respondent No.3 - The Hanuman Vividh Karyakari Sahakari Society Ltd. (hereinafter refereed to for the brevity sake as "the said Society"). The issues raised by the Petitioners are inter-alia the appointment of Respondent No.4 as an Election Officer

fixing the date as 1.1.2007 for being eligible to vote and transferring 64 members from borrower constituency to non-borrower constituency. The learned counsel for the Petitioner Mr.S.P. Kadam however at the threshold submitted that he is not pressing the same issues and will adopt appropriate remedies available to the Petitioner in law for redressal of his grievances in respect of the said issues. Mr.Kadam submitted that the only issue that he desires to agitate in this Petition is as regards the issue relating to constituency reserved for borrower members in which only borrower members would be allowed to vote and similarly for the constituency of non-borrower members, only non-borrower members will be allowed to vote. Mr.Kadam submitted that the Petitioner desires to restrict the above Petition to the said issue. We are therefore not called upon to decide the other issues except the said issue as submitted by Mr.Kadam.

3. There was an earlier round of litigation in respect of the elections to Respondent No.3 - society. Earlier Writ Petition No.6187 of 2006 filed by one Dnyandeo Ramrao Kadam and others, came to be disposed of by a Division Bench of this Court vide order dated 8.1.2007 to which one of us (F.I. Rebello, J.) was a party. The said order has been annexed as Exhibit "C"

to the above Petition. By the said order, it has been held that Respondent No.2 to the Petition, could not have interfered with the electoral process as that power could not have been conferred by the Act and Rules on Respondent No.2, as Respondent No.3 herein not being a notified society, right to conduct the elections would be of the society in terms of the bye-laws. In terms of the said direction in clause "C" of the said order, the entire exercise of holding the elections to Respondent No.3 herein was to be completed within four weeks from the date of the order. Respondent No.3 by resolution dated 22.1.2007 appointed Respondent No.4 as on Electoral Officer for conducting the said elections for the term of five years from 2007 to 2011. Respondent No.3 furnished a list of voters on 31.1.2007 for the purpose of preparing a provisional list of voters. The provisional list of voters was published on 13.2.2006 and time granted for submitting the objections and compliance as regards the provisional list of voters on 28.2.2007 and final list of voters was to be published on 13.3.2007. Accordingly the said stages of elections has passed and the above Petition was heard at the time when the stage of withdrawal of the nomination was reached as per the election programme.

4. As indicated above, the issue in the Petition is restricted to the non-borrower voting for the persons contesting in the non-borrowers constituency and borrower voting for the persons contesting in the non-borrowers constituency. The voting is restricted within the said constituency and there is no interchangeability.

5. It would be relevant to extract the bye-law regarding the composition of the Managing Committee. The said bye-law 38 of Respondent No.3 - Society but the true translation was made available for our benefit by the learned counsel for the Petitioner. The translated bye-law is reproduced hereunder :-

> 38. The Management of the Society should be looked after by the managing committee. The committee would be of 10 members. The constitution of the committee would be as under.
>
> i). Khatedar (Land Holder)/ Borrower member representative - 5.
>
> ii). Non-Khatedar (Non Land Holders)/ Borrower members - 1.
>
> iii). Weaker Section Members - 1.
>
> iv). Scheduled Caste/Scheduled Tribes Members - 1.
>
> v). Lady Members - 1.
>
> vi). Non-Borrower Members representatives - 1.

A. Weaker section member means a member from Weaker sections as declared by the Maharashtra Government from time to time by general or special order.

B. Non-borrower means, a member who has not taken any loan since he has become member.

C. The society would have three constituencies.

i. Land Holders Borrower Members.

ii. Non Land Holders Borrower members.

iii. Non borrower members.

D. Land holder borrowers, non-land holder borrower members whose names are in the list of voters can apply for candidature in weaker sections, scheduled caste/tribe and lady representative.

E. For the election of candidates from Weaker section, scheduled caste/tribes and lady representatives, all the members of the society have right to vote.

The election to the managing committee would be for 5 years by secret ballot. The tenure of the managing committee would be for 5 years from the date of first meeting of such committee after the election. Any vacancy created in the committee for any reason, the committee would fill up such vacancy from the representative of that category by majority. For the meeting of the committee presence of at least 6 members would complete the quorum. The retiring members would be eligible for re-election.

Not withstanding anything mentioned in the above bye laws the tenure of the committee in existence at the time of sanction of present bye-laws would be for a period of 5 years from the first meeting.

38-B. One member from the managing

committee would be elected from non-borrower members. However such elected member would not be eligible to be elected as nominated office bearer like Chairman, Vice-Chairman, President, Vice-President, Non-Salaried Secretary, Jt.Secretary or Managing Director.

Note : Non borrower member means a member who has not taken loan since becoming member.

6. We have heard the learned counsel for the Petitioner Mr.S.P. Kadam, the learned counsel for Respondent No.3 Mr.S.S. Salunke and the learned counsel for Respondent No.4 Mr.S.A. Rajeshirke. A reading of the bye-law makes it clear that there are five seats for the land holder borrower members, one seat for non-land holder borrower members and one seat for weaker section, one seat for S.C./S.T. members, one seat for lady member and one seat for non-borrower members. Thus along with the seats mandated by the Act, makes the strength of the Managing Committee as 17. Clause "c" of the said bye-law 38 provides that there would be three constituencies namely (i) land holders borrower members, (ii) non-land-holder borrower members and (iii) non-borrower members. Clause "d" provides for land-holder borrower members, non-land-holder borrower members, who are in the respective list of voters can apply for candidature in weaker section, S.C./S.T. and women representation. Clause "e" inter-alia provides that for the election

of candidates from weaker section, S.C./S.T. and lady representative all the members of the society have right to vote.

. What emerges on the reading bye-law 38 is that there are five seats for borrower members, one seat for non-borrower members and one seat for non-land holder borrower members and there are three separate constituencies as indicated above. The learned counsel for Respondent No.3 Mr.Salunke submitted that presently Respondent No.3 does not have any non-land-holder borrower members and therefore, the issue is restricted to only land-holder borrower members and non-borrower members in respect of which the Petitioner can be said to raise a dispute as regards their voting rights.

7. On behalf of the Petitioner, Mr.S.P. Kadam submitted that though the bye-law carves out three separate constituencies for borrower members, non-borrower members and non-land-holder borrower members,there is no specific bar for the members of each of the said categories to vote for the persons in the other category in the election to Respondent No.3. It is the submission of the learned counsel for the Petitioner that the constituency is one but there are

seats ear-marked for borrower and non-borrower members and therefore, like the constituency for weaker section, S.C./S.T. all the members of the society have a right to vote. The learned counsel for the Petitioner submitted that in respect of Respondent No.3 - Society, the bye-laws would have primacy in respect of the election concerned and since the bye-laws do not restrict the right of voting to borrower and non-borrower members, in their respective constituencies the election programme restricting the right to vote in respect of the said two constituencies i.e. the borrower and non-borrower constituencies in the said election is in violation of the said bye-laws and therefore illegal.

8. On behalf of the Respondents, it has been contended that the separate constituencies have been created for borrower and non-borrower members and therefore, voting rights would necessarily have to be restricted to the members belonging to that particular constituency. The learned counsel for the Respondents both Mr.Salunke and Mr.Rajeshirke drew our attention to the bye-law 38(e) where it has been specifically provided that all the members of the society would have a right to vote in respect of the election of candidate from the weaker section, S.C./S.T. and lady

representatives. Relying upon the said bye-law 38(e), it is the submission for the Respondents that whenever all the members have a right to vote, it has been specifically provided for in the bye-laws. Since a separate constituency has been constituted for borrower and non-borrower members, right to vote would have to be necessarily restricted as otherwise, there was no purpose of creating separate constituencies. The learned counsel for the Respondents submitted that in so far as the seats meant for S.C./S.T., weaker section and women are concerned, the seats are reserved and there is no separate constituency and therefore right is given to all the members to vote in respect of the said seats. The learned counsel for the Respondents relied upon the judgment reported in *2004(1) M.L.J. 923 in the matter of - Bhajandas Gorekh Bhuirkar vrs. District Election Officer and others*. A similar issue had arisen in the said case as to whether right to vote could be restricted. The Petitioner in the said case was a borrower member but apprehended that the right to vote in the elections to the society concerned would be restricted to only in the constituency of borrower members and that non-borrower members would not be allowed to vote for one seat meant for non-borrower members in the said society. However what is significant to note in

respect of the said case is that there was a specific bar as regards the borrower members voting for non-borrower members and vice-versa. In that context, the Division Bench held that since there was a specific bar in the light of the said bye-laws, there was no substance in the Petition and therefore dismissed the same.

9. On behalf of the Petitioner, the learned counsel also relied upon the same judgment to contend that since there is specific bar in the light of that, right to vote would be restricted to the constituency concerned.

10. We have given our anxious consideration to the rival contentions. A reading of the bye-law makes it absolutely clear that there are three separate constituencies carved out. However, in view of the present position wherein there were only two constituencies i.e. borrower and non-borrower constituencies in the Respondent No.3 society. Though there is no express bar in bye-laws restricting the right of voting to the members belonging to the respective constituencies, the fact that separate constituencies have been created would imply that the right of voting would have to be necessarily

restricted as otherwise there would have been no necessity of carving out separate constituencies and only the seats could have been reserved for the said categories. We therefore, find considerable merit in the submission of the learned counsel for the Respondents that in view of the fact that separate constituencies have been carved out for borrower and non-borrower members, voting right would therefore have to be restricted. Another aspect to be noted is that clause 38(e) in respect of the weaker section, S.C./S.T. and lady representatives. All the members of the society have been given a right to vote. This can be attributed to the fact that the seats have been reserved for the said categories in the Managing Committee. However, no separate constituencies have been created by the bye-laws. Therefore, the learned counsel for the Respondents are right in their submission that in the said three categories right of voting has been given to all the members. If the right of voting was to be given to all the members in respect of borrower and non-borrower constituency, there would have been no need to specifically mention in bye-law 38 (e) that a right of voting in respect of the said three constituencies mentioned therein is given to all the members.

11. We, therefore, find that the challenge of the Petitioner to the restrictive right of voting in respect of the borrower and non-borrower constituency is bereft on any merit. The fact that separate constituencies have been created is a pointer to the fact that voting right would be restricted though there is no specific bar in the said bye-laws.

12. In that view of the matter, we do not find any merit in the above Petition and the same is accordingly dismissed and Rule discharged.

13. We make it clear that in respect of other issues since the same have not been pressed in the present Petition, the Petitioner would be entitled to prosecute his remedies at law in respect of the said issues if an occasion so arises after the elections are completed.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)